IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

Writ Petition No. 442 / of 1998.

Santosh Kumar Sharms -- Petitioner

Versus

Commissioner, Nagam Nigam, Raipur -- Respondent

PETITION UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA FOR ISSUING A WRIT IN THE NATURE OF CERTIORARI, MANDAMUS ETC. & ALSO FOR ISSUING NECESSARY DIRECTIONS

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HIGH COURT OF CHHATTISGARH, BILASPUR
W.P. No.4421/1998

Santosh Kumar Sharma

Vs.

Commissioner, Nagar Nigam, Raipur

ORDER

Post for 29.07.2005

Sd/-
Sunil Kumar Sinha
Judge

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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. No.4421/1998

Santosh Kumar Sharma

Vs.

Commissioner, Nagar Nigam, Raipur

Shri P. Diwakar, Sr. Advocate with Shri P.R. Patankar, for the petitioner.

Shri H.B. Agrawal, Sr. Advocate with Ms. Shipra Biswas, for the respondent.

O R D E R
(29.7.2005)

Sunil Kumar Sinha, J,

The petitioner, who is working on the post of Aushadi Sanyojak (Compounder)has filed this petition for issuance of a direction to the respondent to consider his case for promotion to the post of Ayurvedic Chikitsa Adhikari and also for payment of difference of wages for the period in which he alleges to have worked on the said higher post.

(2) The case of the petitioner is that he was initially appointed on the post of Aushadi Sanyojak (Compounder) by way of direct recruitment on 30.09.1985. He is having qualifications of M.A (Economics)., M.A. (Sociology)., and also Ayurved Ratna, which according to the petitioner, is equivalent to the qualification of B.A.M.S. According to the petitioner, while working on the post of Compunder, the petitioner was directed to work as Ayurvedic Chikitsa Adhikari in the pay scale of Rs.2,200-4000/- vide order dated 31.3.1993, a copy of which has been filed as Annexure P-1. The petitioner claims that in pursuance of the aforesaid order he was continuously working as Ayurvedic Chikitsa Adhikari, but he

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was paid the salary of Compunder (Aushadi Sanyojak) and the salary of the said post of Ayurved Chikitsa Adhikari was not paid to him. He further alleges by filing interim application I.A.No. 639/1999 that after issuance of the notice from the High Court, the respondent passed an order dated 02.02.1999 and directed the petitioner to work as Compounder (Aushadi Sanyojak) again. In this manner he submits that he is entitled to the salary of the Ayurvedic Chikitsa Adhikari from 31.3.1993 to 02.02.1999 and also for consideration for promotion to the said post from the post of Compunder.

(3) The return has been filed by the respondent. It is contended by the respondent that the petitioner is merely a compounder and as such he cannot be promoted to the post of Ayurvedic Chikitsa Adhikari. The minimum qualification for the post of Ayurvedic Chikitsa Adhikari is B.A.M.S., which the petitioner admittedly does not possess. It has been specifically contended vide para 1 of the return that Ayurved Retna is not equivalent to the qualification of B.A.M.S., as alleged by the petitioner. It is further contended by the respondent that the petitioner is wrongly interpreting the order dated 31.3.1993 (Annexure P-1). By the said order dated 31.3.1993, the petitioner who was working on the post of compounder in a dispensary was also directed to look after the work of Rajendra Nagar Hospital as a compounder only, as no body was available there at that time. It has been specifically mentioned in the return that the petitioner has not been asked to perform the duties of Ayurvedic Chikitsa Adhikari, therefore, the petitioner can neither claim for difference of salary for the period he worked in the said hospital nor can he claim for consideration of his case for promotion to the next higher post. About the date of appointment, it has been pleaded that in fact, the petitioner was initially appointed as a Dresser on 17.12.1982 and thereafter he was promoted as compounder on 14.6.1990.

(4) I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

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(5) Admittedly, Annexure P-1 is the order dated 31.3.1993 on the basis of which the petitioner is claiming that he was directed to work as the Ayurvedic Chikitsa Adhikari by the respondent in Rajendra Nagar Hospital, Raipur. After perusal of the order dt.31.3.1993, it appears that the name of the petitioner finds place at serial no.11 of the said order. The persons mentioned in serial no.1 to 10 of the order are the Ayurvedic Chikitsa Adhikari who have been directed to be posted in various hospitals. However, the petitioner is the only Compounder whose name is mentioned at serial No.11 of this order and for him it has been directed that until further orders, he will also look after the work of Rajendra Nagar Ayurvedic Hospital. It is specifically mentioned for the petitioner that for looking after the work of Rejendra Nagar Hospital he will not be entitled to any additional allowances in his favour. If we analyse the contents of this order issued in favour of the petitioner, then it would appear that the order nowhere says that the petitioner will work as an Ayurvedic Chikitsa Adhikari instead of a Compounder. It appears that the petitioner is misrepresenting the order and is claiming salary of Ayurvedic Chikitsak in place of a compounder. Not only this, the order dated 02.02.1999 which is an order of transfer, also indicates that the petitioner will work on the post of compounder at his transferred place. Not a single document has been filed by the petitioner, which may show that either he was temporarily promoted to the post of Ayurvedic Chikitsak from the post of compounder or he has performed the duties of Ayurvedic Chikitsak in between 31.3.1993 to 02.02.1999 instead of a compounder.

(6) It is submitted by the petitioner that the rules applicable in his case are the **M.P.Public Health (Indian System of Medicine and Homoeopathy) Class III Ministerial Services Recruitment Rules, 1987.** If we examine these rules, it would be clear that the next higher post to the post of Compounder is the post of Asst. Ayurvedic Medical Officer and 40% of the promotional posts is to be filled up from the compounders who are Ayurvedic Graduates.

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The relevant rules relating to appointment and promotion are quoted as under:

"**6. Method of Recruitment**.—(1) Recruitment to the service after the commencement of these rules, shall be by the following methods, viz—

(a) By Direct Recruitment by Selection.

(b) By promotion of members of the service

(c) By Transfer of persons who hold in a substantive capacity such posts in such services may be specified in this behalf.

(2) The number of persons recruited under clause (a) or clause (b) of sub-rule(1) shall not at any time exceed the percentage shown in schedule II, of the number of duty posts specified in schedule I.

(3) Subject to the provisions of these rules, the method or methods of recruitment to be adopted for the purpose of filing any particular vacancy or vacancies in the service as may be required to be filled during any particular period of recruitment, and the number of persons to be recruited by each method shall be determined on each occasion by the appointing authority.

(4) Notwithstanding anything contained in sub-rule (1), if in the opinion of the appointing authority the exigencies of the services so require, the appointing authority may with prior concurrence of the General Administration Department adopt such method of recruitment to the service other than those specified in the said sub-rule, as it may by order issued in this behalf, prescribe.

13. Appointment by Promotion.—(1) There shall be constituted a committee consisting of members mentioned in Schedule IV for making a preliminary selection for promotion, of eligible candidates.

(2) The departmental promotion committee shall meet at intervals ordinarily not exceeding one year.

(3) 16 per cent and 20 per cent of available vacancies for promotion in such posts in which the percentage of promotion is 33 1/3 percent, or more, as specified in schedule II, shall be reserved for candidates belonging to the scheduled castes and scheduled tribes who are eligible for promotion in accordance with the provisions of rule 14.

(4) Procedure for making promotions in the reserved vacancies shall be in accordance with the instructions issued by Government in the General Administration Department, from time to time.

14. Conditions of Eligibility for Promotion--(1) Subject to the provisions of sub-rule(2) the Departmental promotion committee shall consider the cases of all persons who on the First day of January of the year have completed not less than such number of years of continuous service [whether substantive or officiating as specified in column (4) of schedule IV], in the post mentioned in column (2) of the said schedule or any post or posts declared equivalent thereto by the Government. The promotions to the clerical posts in which Accounts Training is compulsory will be made only from the persons in the next Junior posts where persons have qualified in accounts, persons who were promoted without qualifying in accounts against the prescribed posts will have to qualify in accounts within a period of 2 years from the date of promotion:

Provided that any junior person shall not be considered for selection grade/promotion in preference to the person senior to him only on the basis of his completing the prescribed service.

(2) The field of Selection shall ordinarily be limited to seven times the number of officers to be included in the select list, in respect of posts filled on the basis of merit-cum-seniority and five times the number of officers to be included in the select list in respect of posts filled on the basis of seniority-cum-merit:

Provided that if the required number of suitable officers are not available to the field, so determined, the field may be enlarged to the extent considered necessary by the committee by mentioning the reasons in writing."

(7) If we examine the case of the petitioner in light of the order Annexure P-1 and also in light of the rules referred to above, it would appear that the petitioner was neither appointed nor promoted nor directed to work on the post of Ayurvedic Chikitsak. There is a simple direction contained in Annexure P-1 that the petitioner, who admittedly was holding the post of compounder on 31.3.1993 will also look after the work of Rajendra Nagar Hospital. Non-mentioning of the post and capacity on which the petitioner shall look after the work of Rajendra Nagar Hospital clearly

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indicates that he had to look after the work of the said hospital in the same capacity and on the same post which he was holding on the date of passing of the said order. In fact it was a direction for taking the charge of Rajendra Nagar Hospital until further orders. If this order does not indicate that the petitioner will look after the work of the said Hospital in the capacity of the Ayurvedic Chikitsak, then, the petitioner is not entitled to received any amount of difference of pay of the higher post on the strength of this order (Annexure P-1).

(8) Now coming to the second contention that since the petitioner had worked on the post of Ayurvedic Chikitsak in the said period, therefore, he was entitled for pay of the higher post, it is difficult to hold like this. First of all, as stated above, the petitioner has not placed on record any such document which may suggest that he worked on the higher post in the said period. Logically also the same does not appear to be correct because when a person does not hold the requisite qualification for the higher post or the next promotional post, normally, neither he can be directed to officiate on the said post nor he can officiate on the said post. The contention of the petitioner that he worked on the post of Ayurvedic Chikitsa Adhikari cannot be accepted, therefore, he cannot be held to be entitled for the difference of salary of that period on this ground also.

(9) The last point relates to the consideration for promotion to the next higher post. It has been specifically mentioned by the respondent on oath that the petitioner does not fulfill the minimum qualification for the post of Ayurvedic Chikitsa Adhikari as he is not having the qualification of B.A.M.S., and the Ayurved Ratna is not equivalent to B.A.M.S. This averment in the return has not been controverted by the petitioner by filing any rejoinder. Learned counsel for the petitioner also could not point out as to how a qualification of Ayurved Ratna is equivalent to B.A.M.S., or an Ayurvedic Graduate. No material on record has been placed for consideration on this line. In the above facts and circumstances of

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the case, this Court refrains from passing an order for consideration of the case of the petitioner for promotion to the post of Ayurvedic Chikitsa Adhikari, at this stage.

(10) On the basis of the above discussion, there is no merit in the petition. The petition is dismissed. There shall be no order as to costs.

Sd/-
Sunil Kumar Sinha
Judge

/Rao/